

**VAUGHN FARM AGRICULTURAL TILLAGE
LEASE AGREEMENT**

This Agricultural Tillage Lease ("Lease") is made and entered into by and between New Castle County, a political subdivision of the State of Delaware ("County" or "Lessor"), and _____ ("Lessee"), on this _____ day of _____ 2020.

The County owns a parcel of land located at 617 Marl Pit Road, Middletown, Delaware, and more specifically identified on New Castle County tax maps as Tax Parcel No. 13-017.00-036, consisting of approximately 464.39 ± acres ("the entire Property") as depicted on Exhibit "A" attached hereto. Lessee desires to lease a portion of the Property, consisting of approximately 396± tillable acres ("Premises") for agricultural tillage purposes. The County hereby agrees to lease the Premises to the Lessee, subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Lessee and County agree as follows:

1. Term of Lease. The term of the Lease shall be five (5) years, and shall commence on March 31, 2021 and shall expire on March 31, 2026.
2. Annual Rent. Lessee shall pay as rental for the land \$_____, for each year of the five-year term. This represents a rental fee of \$_____ per acre on 396 tillable acres. Payments shall be paid on a semi-annual basis: twenty-five percent (25%) of the rent (which equals \$_____) is due on or before March 15th, the remaining seventy-five percent (75%) balance is due on or before October 31st. Five percent (5%) interest, compounded monthly, shall be charged on the last day of every month that the rent payment is late, and the County reserves the right to terminate the Lease for any late payments that are not cured within the timeframe noted in Section 4 below.
3. Purpose. Lessee shall use the Premises solely for agricultural tillage purposes and the activities associated therewith. No chemicals may be stored on the Premises. The Lessee shall also ensure that the conduct of all persons utilizing the Premises is in accordance with the above-referenced purpose and all applicable rules and regulations. Any use inconsistent with or not in furtherance of said purpose shall be considered a breach of the Lease, unless said use has been approved in writing by the County.
4. Termination. Should Lessee breach or fail to comply with any of the provisions of the Agreement, the County may opt to terminate the Lease or order Lessee to cure such breach. If the County opts to terminate the Lease, the County shall notify Lessee in writing in accordance with the Notice provision below. If the County opts to order Lessee to cure a breach or failure, the County shall notify Lessee in writing in accordance with the Notice provision below and Lessee shall cure said breach or failure within thirty (30) days of receipt of notice from the County. In the event that the breach or failure cannot be cured within thirty (30) days, Lessee must inform County of such fact (with supporting documentation) and County will determine a time to cure. If Lessee does not cure within thirty (30) days or the time designated by the County, whichever time period is applicable, this Lease shall be terminated immediately upon

County's written notice of such termination. The County also reserves the right to terminate the Lease with ten (10) days' written notice to the Lessee if the County requires immediate possession of the Premises and/or Property for any governmental purpose.

If at termination crops exist on the Premises, the County will reimburse Lessee the fair market value of the crops, provided Lessee has paid its rent in full. If termination occurs during the beginning stages of the planting season, the Lessee shall be reimbursed for its maintenance and planting costs (not to include anticipated profits) associated with the crops on the Premises, provided Lessee has paid its pro rata rent up to the termination date.

At the termination or expiration of this Lease, Lessee shall promptly remove all its effects from the Premises and peacefully yield the Premises to the County in the same or better condition than it was in at the commencement of the Lease term, which will allow the Premises to be immediately suitable for farming. Lessee shall reasonably compensate the County for any damage to the Premises, ordinary wear and tear excepted. Upon termination or expiration of this Agreement for any reason, the Lessee shall provide the County with a forwarding address in writing. Under Title 25, Section 6703 of the *Delaware Code*, no further notices to terminate shall be required in order to terminate the Lease on the dates set forth in this Paragraph.

5. Specific Conditions. The following conditions shall apply during the term of the Lease:

- a. Lessee will be able to begin farming the property no earlier than April 1, 2021 and no later than May 30, 2021. The final lease agreement must be fully executed prior to Lessee planting.
- b. Lessee shall ensure, and not in any way interfere with, access to structures on the Property and/or Premises reserved for sole use by University of Delaware College of Agricultural and Natural Resources.
- c. Lessee shall maintain cleared access lanes to all fields.
- d. There is no crop limitation on the Property and/or Premises.
- e. The Property is non-irrigated.
- f. Lessee shall not plow, disk or otherwise till any leased areas until March 15 of each year in order to leave food and cover for wildlife during the winter.
- g. Lessee shall maintain crop insurance for each year of the Lease.
- h. The County reserves the right to prohibit the use of certain agricultural pesticides on the Property and/or Premises. Lessee may be requested to submit a listing of pesticides to be used on the Property and/or Premises. Violation of Federal or State pesticide regulations shall constitute "cause" to terminate the lease.
- i. Lessee shall enter into a Nutrient Management Plan for the Property and/or Premises during the term of the lease. The plan shall follow all applicable State regulations including those pertaining to the use of animal waste manure.
- j. Scare devices (flags, exploders, etc.) are prohibited.
- k. The County reserves the right to create hedgerows, ponds, buffer strips, or divert land for other uses. Annual rental shall be reduced to reflect acreage taken out of production as a result of such changes.
- l. The County reserves the right to require Lessee to implement Best Management Practices ("BMPs") consistent with applicable Watershed Plans. The County shall

work with Lessee to negotiate BMPs, and to assist Lessee in obtaining applicable/available funding from federal, state and non-profit sources for developing and implementing BMPs. Costs of BMP implementation not covered by federal, state and other funding sources, may be deducted from Lessee's per acre rent for each year of the Lease term in which BMPs are in practice.

6. Maintenance and Utilities. Lessee shall provide all necessary maintenance services to ensure that the Premises is kept clean, safe and well-maintained throughout the term of the Lease. Such maintenance services shall include but not be limited to snow removal necessary for access, trash disposal, removal of all debris, and mowing the grass as needed. Such maintenance services shall be performed in a good and workmanlike manner. The County shall not be responsible for maintenance, repairs, or improvements of any kind to the land any buildings and/or improvements located on the Premises.

Throughout the term of the Lease, the Lessee shall contract for and shall be solely liable for all costs associated with applicable utilities, including but not limited to electric, trash removal, sewer, and water on the Premises. The Lessee shall pay all charges for utilities in a timely fashion. For any utilities not separately metered, the Lessee shall pay its pro rata share as determined by the County no later than thirty (30) days after receipt of an invoice. For any new utilities, the Lessee must obtain the prior written approval of the General Manager of Department of Public Works ("General Manager") before installation, and the Lessee shall be responsible for any costs to maintain or supply utility services to the Premises, including but not limited to the installation of utility lines and metering equipment. Lessee shall not be responsible for utilities or the portion of the utilities serving the structures reserved for sole use by University of Delaware College of Natural Resources.

7. Damages to or Destruction of Property and/or Premises. As stated above, the County shall have no responsibility to the Lessee to repair or to maintain the Property and/or Premises during the term of this Agreement. If the Property and/or Premises are damaged or destroyed to any degree, the Lessee shall be obligated to replace or repair it. If the Property and/or Premises are substantially damaged or destroyed and the Lessee is unable to replace or repair, the Lessee shall give the County written notice and the County may terminate the Lease within thirty (30) days after the County receives said notice.

8. Improvements. The Lessee must receive written approval from the General Manager prior to making any improvements or demolishing any existing improvements or structures on the Premises. All such improvements and/or demolition shall be performed in a good workmanlike manner. In making such improvements, the Lessee shall obtain all required permits and comply with all applicable local, state and federal laws, including but not limited to the County's Unified Development Code. The Lessee agrees that no reimbursement for any such improvements shall be given and that at the termination of the lease, all such improvements becomes the sole property of the County, free and clear of any liens or encumbrances.

9. Access. The County shall be permitted to enter the Premises at any time. Lessee shall also provide and ensure access to the Premises during normal business hours to official

representatives of Federal, State and local agencies having jurisdiction, for inspection and other official purposes.

11. Compliance with Applicable Laws. In its use of the Premises and presence on the Property, Lessee agrees to comply with all applicable federal, state, and county statutes, ordinances, rules, orders, policies, regulations and requirements, and any and all Court, Department, and/or Bureau orders and/or directives applicable to the Premises and/or Property, including, but not limited to all environmental requirements and requirements of the Board of Fire Underwriters for the prevention of fires.

Lessee, and/or its invitees, employees, volunteers, successors and assigns shall not discriminate against any person by reason of race, creed, color, religion, sex, age or national origin.

12. Insurance. Lessee shall maintain the insurance indicated below throughout the term of this Agreement. A confirming Certificate of Insurance is attached hereto as Exhibit B evidencing below coverage. Lessee hereafter shall provide a confirming Certificate of Insurance annually and no later than thirty (30) days prior to the end of the coverage period.

- A. Lessee shall purchase and keep in force and effect workers' compensation insurance that will provide the applicable statutory benefits for all of the Lessee's employees who may or do suffer covered injuries or diseases while involved in the performance of their work for the Lessee; and, even if permitted to do so by statute, the Lessee shall not reject any worker's compensation insurance option that, in the absence of such a rejection, would be applicable to any of the said employees. The policy providing the workers' compensation insurance shall include: (1) broad form all-states coverage; and (2) an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the County, its officials or employees.

Lessee shall purchase and keep in force and effect employers' liability insurance with minimum limits for each employee of \$1,000,000 for each bodily injury by accident, or occupational disease, and \$1,000,000 aggregate minimum limits for all bodily injuries by accidents and occupational diseases during the Lease, regardless of the number of employees who may sustain bodily injuries by accident or occupational disease.

- B. Lessee shall purchase: (1) motor vehicle liability coverage, for owned, hired and non-owned vehicles, covering any and all claims for bodily injury and property damage that arise out of the Lessee's performance of work for the County, (2) comprehensive Commercial General Liability ("CGL") insurance with limits of no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. The CGL policy shall be extended by endorsement or otherwise to also include (a) coverage for Contractual Liability assumed by the Lessee, with defense provided in addition to and separate from policy limits for indemnities of the named insured, (b) coverage for Independent Contractor Liability providing coverage in connection with such portion of the Services being subcontracted prior to any of the Services being subcontracted, in accordance with the terms and conditions of this Agreement, (c) coverage for

Broad Form Property Damage Liability, (d) coverage for Personal Injury and Advertisers Liability, (e) products and completed operations.

- C. All insurance required under this contract except workers' compensation, employer's liability, and professional liability (if applicable) shall be provided on a policy(s) that specifically names the County, its officials and employees as additional insureds.
- E. Each policy shall provide an endorsement that specifically waives any subrogation rights the insurer would otherwise have against the County, its officials or employees.
- F. Each policy shall be endorsed to require the insurer to give the County at least thirty (30) days' advance written notice of the insurer's intention to cancel, refuse to renew, or otherwise terminate the policy, suspend or terminate any coverage under the policy, or reduce any policy limits, increase any policy deductibles, or otherwise modify or alter any terms or conditions of the policy or renewal issued by the same insurer.
- G. Each policy shall be written by a carrier licensed by the State of Delaware to do insurance business of the type involved in the State of Delaware, and which has, and maintains for the life of this contract, at least an "A" rating from the A.M. Best Agency with "Stable" outlook. Any change in this rating or outlook must be provided to the County by the Lessee or insurance carrier as soon as possible upon learning of same; and the Lessee shall use due diligence with its insurance broker or carrier to keep track of same.
- H. All insurance required under this Lease except workers' compensation and employer's liability shall expressly provide that such insurance shall be primary insurance; and any similar insurance in the name of the Lessee shall be excess and non-contributing. Deductibles for insurance provided under this Agreement shall not exceed five percent (5%) of policy limits.

13. Administrative Fee. In addition to the rent set forth in Section 4 above, Lessee shall pay the County a fee in the amount of one hundred and ninety dollars (\$190.00) per year. The fee in this Section shall be adjusted each year effective on July 1st to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the previous year. The amount of the change in the fee shall be determined by multiplying the existing fee by the percentage change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all urban consumers published by the US Department of Labor for the Philadelphia-Wilmington-Atlantic City area as of the close of the twelve (12) month period ending on April 30th of each year. In years that the consumer price index does not change or decreases from the previous year, the fee shall remain the same.

14. Assignment. Lessee shall not assign this Lease or lease or sublease the Premises or any part of the Premises and/or Property to any entity(s) or person(s) whatsoever without receiving prior written consent from the County.

15. Encumbrances. Lessee shall not mortgage or encumber any part of the Premises and/or Property or this Lease and shall keep the Premises and any improvements thereon free and clear of all liens and claims of liens or encumbrances and shall indemnify and hold harmless the County of and from all liens and claims of liens or encumbrances, whether valid or not, on the Premises and/or Property. Lessee further agrees to pay all court costs, reasonable attorneys' fees and expenses incurred by the County in defending any such claims of liens or encumbrances.

16. Property/Premises Condition. Lessee hereby acknowledges that it has inspected the Premises and Property, that it has had the opportunity to perform any testing or inspections, that it is familiar with its condition, and that the County has not made any warranties or representations as to its condition. Lessee accepts the Premises and any improvements or structures thereon in its "as-is" condition. The County shall not be liable for any loss or damage resulting from any existing defects or conditions of the Premises and/or Property.

17. Easements and Subsurface Utilities. This Lease shall be subject to the terms of any easements, restrictions, or other agreements of record now or hereinafter recorded against the Premises and/or Property. The County also reserves the right to install, repair or replace any subsurface utility lines, including but not limited to sanitary sewer lines, on the Premises and/or Property. After excavation by the County or its agents, the County or its agents shall restore the Premises to its former condition as near as reasonably practicable.

18. Notice. Any notice provided for herein shall be given by hand or registered or certified mail, postage prepaid and addressed to:

For New Castle County –
General Manager
New Castle County Department of Public Works
187-A Old Churchman's Road
New Castle, DE 19720

For _____ –

Please note that any notices required under Section 11 of this Lease shall be sent to the New Castle County Risk Manager, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.

The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party.

19. Amendments/Modification. No amendments or modifications to this Lease shall be binding unless in writing and signed by the County and _____.

20. Binding on Heirs. This Lease shall be binding upon and for the benefit of the heirs, executors, administrators, and successors of the County and Lessee in like manner as upon the original parties, except as provided by mutual written agreement.
21. Integration. This document comprises the entire agreement between the parties hereto and supersedes any prior agreements or representations, whether verbal or in writing.
22. Choice of Law. This Lease shall be governed by and construed in accordance with the laws of the State of Delaware. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in New Castle County.
23. Signature Authority. Both the County and Lessee represent and warrant that they have full and complete authority to execute this Lease on behalf of their respective organizations.
24. Opportunity to Consult with Legal Counsel. Lessee and the County acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Lease.
25. Time Calculations. Time is of the essence. The term “day” as used herein shall mean calendar day, unless specifically defined as a “business day.”
26. No Waste, Nuisance or Unlawful Use. Lessee shall not commit or allow any waste or nuisance to be committed on the Premises and/or Property. Lessee also shall not use or allow the Premises and/or Property to be used for any unlawful purpose.
27. Legal Construction. The parties acknowledge that each had the ability to negotiate terms and conditions, and this Lease shall not be construed against the party who prepared and drafted the Lease documents. If one or more of the provisions of the Lease is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the Lease, and the Lease shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
28. Headings and Subheadings. The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Lease.
29. Non-Waiver of Rights. Any forbearance by either party in exercising its rights hereunder shall not be construed as a waiver thereof. Any waiver by either party of any provision or condition of this Lease shall not be construed or deemed to be a waiver of any other provision or condition of this Lease, nor a waiver of a subsequent breach of the same provision or condition.
30. No Third-Party Beneficiaries. Neither the provisions of this Lease nor the performance of the parties hereunder is intended to benefit, nor shall inure to the benefit, of any third party.
31. Execution in Counterparts. This Lease may be executed in two counterparts, both of which shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above-mentioned.

NEW CASTLE COUNTY

Witness

Matthew S. Meyer
COUNTY EXECUTIVE

(Seal)

Witness

Name:
Title: